

**Washington State Department of Transportation's
Federal Transit Administration
Federal Fiscal Year 2010
Overall Annual Disadvantaged Business Enterprise Goal**

The Washington State Department of Transportation (WSDOT) submits this Disadvantaged Business Enterprise (DBE) goal methodology to the U.S. Department of Transportation's Federal Transit Administration (FTA) for review and approval pursuant to 49 CFR § 26.45 to establish the overall DBE goal for its federally-assisted transit contracts. For Federal Fiscal Year (FFY) 2010, WSDOT has established a proposed overall DBE goal of 10.65%, utilizing a Step Two adjustment. The Step Two adjustment is based on the requirements of 49 CFR § 26.45.

WSDOT determined its FFY 2010 overall DBE goal by establishing a Step One base figure by calculating the relative availability of DBEs statewide and a Step Two adjustment based on the opportunities and projected opportunities available in FFY 2010. When calculating the Step Two adjustment, both Washington State Ferries (WSF) and Public Transportation Division (PTD) projects were taken into consideration. WSF determined \$10,791,941 in projects are anticipated to be awarded during FFY 2010 whereas, PTD projections indicate an award amount of \$13,396,499¹. WSDOT evaluated the types of projects anticipated to be awarded during FFY 2010 and further refined the availability study conducted by NERA Economic Consulting, Inc. to determine the overall annual DBE goal for FFY 2010.

A portion of WSDOT's overall DBE goal is based on a projected amount of race-conscious participation of 7.1% and race-neutral participation of 3.55% which WSDOT expects to attain in FFY 2010.

This methodology and the supporting evidence complies with the requirements of the federal regulations, as well as the decisions in *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964 (8th Cir. 2003), *cert. denied*, 124 S.Ct. 2158 (2004); *Western States Paving Co. v. Washington State Department of Transportation*, 907 F.3d 963 (9th Cir. 2005); and *Northern Contracting Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007).²

¹ For both the WSF and PTD data "American Recovery and Reinvestment Act" financial assistance data was included.

² See also *Concrete Works of Colorado Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003) (Denver's program was constitutional based upon a similar methodology by the same consultant); *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N. D. Ill. 2003) (Chicago's Minority and Women Business Program was based upon similar "strong evidence").

1. Step One Baseline Availability

To meet the requirements of 49 CFR § 26.45, WSDOT commissioned an Availability Study, entitled "Race, Sex, and Business Enterprise: Evidence from the State of Washington" ("Study"), from NERA Economic Consulting, a nationally recognized economics consulting firm. WSDOT relied upon this Study, together with WSDOT's most recent DBE commitment data in setting its FFY 2010 goal.

The Study provided a statistical analysis of baseline DBE availability, and factors impacting entrepreneurial success on WSDOT contracts and subcontracts. The Study estimated statewide DBE availability using data on WSDOT's expenditures for highway construction and engineering consulting contracts and subcontracts, and databases of firms in those industries. The Study reviewed existing quantitative evidence of discrimination and assessed the likelihood that statewide DBE availability would be different if the relevant markets in which WSDOT operates were race-neutral; it then estimates the magnitude of this difference.

The Study provided a narrowly tailored, statistically sound and detailed basis to meet the requirements of 49 CFR, Part 26 and fully addresses the remedial purpose of the DBE Program and Congressional intent. The Study examined disparities between the rates of business formation and earnings between DBEs and similarly situated businesses owned by white males. The Study analysis supports the inference that discrimination continues to impede the ability of disadvantaged minority- and women-owned firms to compete fully and fairly for WSDOT prime contracts and subcontracts.

Having established the existence of such discrimination, a governmental entity "has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice." Croson, 488 U.S. 492.

Using empirical market definitions, business establishment data and statistical verification surveys, the Study concluded 18.77% as the base availability figure for DBE availability in the transportation construction industry in Washington State.

2. Step Two Adjustment

49 CFR § 26.45(d) states "Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal." Furthermore, the United State Department of Transportation, Office of Small and Disadvantaged Business Utilization (OSDBU) issued Guidance on *Tips for Goal-Setting in the Disadvantaged Business Enterprises (DBE) Program* ("OSDBU Guidance") which states that the Step Two adjustment is intended to

make the goal setting as precise as possible and explanation of the Step Two process is a very important part of the overall submission. Also, "... If the evidence suggest an adjustment is warranted, it is critically important to ensure that there is a rational relationship between the data you are using to make the adjustment and the actual numerical adjustment made".

In order to make the FFY 2010 FTA DBE goal as precise as possible, WSDOT evaluated anticipated projects for WSF and evaluated prior grants awarded from PTD to project upcoming opportunities. WSDOT then analyzed these projects and assigned them North American Industry Classification System (NAICS) Codes. After assigning NAICS codes, WSDOT determined the availability of these NAICS Codes by evaluating the corresponding Standard Industry Classification (SIC) Codes, as defined in the NERA Study. Following are the WSF anticipated projects and projected PTD grants awarded:

a. Washington State Ferries

WSF is anticipating receiving \$10,791,941 in financial assistance from FTA for FFY 2010. These projects include American Recovery and Reinvestment Act financial assistance, as well as customary financial assistance. The financial assistance to be received by WSF from FTA is going to be utilized for the following types of projects:

- Ferry vessel preservation and improvements - \$6,742,400
- Retrofit supporting bridge structures for seismic strength - \$867,000
- Replace asphalt pavement - \$1,938,440
- Replace deteriorated timber piles with inadequate remaining strength - \$1,244,101

The above projects may include but are not limited to the following types of work:

- structural system preservation
- interior preservation
- piping preservation/ replacement
- propulsion system preservation
- major mechanical/electrical systems preservation
- communication/navigation/lifesaving systems preservation, and
- other miscellaneous preservation work

Project activities will include, but are not limited to:

- investments that renovate, replace and/or upgrade vessels
- renovate, replace and/or upgrade terminal systems and structures in order to ensure facilities provide access to terminals, movement through the ferry system and connections to other modes of travel including trestles, vessel landing structures (dolphins and wingwalls) bridge

- structures (towers, bridge seats, aprons, transfer spans, overhead loading), buildings, utilities, security equipment, paved areas, etc., and fund other investments such as emergency repairs, regulatory compliance and enhancements that promote efficient, effective and customer oriented terminal operation.

b. Public Transportation Division

To determine what types of projects would be awarded during FFY 2010, WSDOT evaluated prior projects from 2004 through 2009 and determined what percentage contained contracting opportunities. The 2009 American Recovery and Reinvestment Act projects were evaluated as part of the 2009 prior project evaluation. The years with the percentage of grants with contracting opportunities are as follows:

Year	Total Grants Awarded	DBE Opportunities	DBE Opportunity Percent
2004	9,050,728.00	916,665.50	10.13%
2005	9,050,728.00	916,665.50	10.13%
2006	10,936,459.50	974,530.50	8.91%
2007	10,936,459.50	974,530.50	8.91%
2008	13,262,590.46	1,333,576.00	10.06%
2009	\$27,142,027.11	\$7,058,634.00	26.01%
Average Percent DBE Opportunity			12.36%
Average Total Grants Awarded			\$13,396,498.76

c. Step Two Adjustment Summary

WSDOT then further examined the NERA Study and determined twenty-six (26) ³ of the thirty-two (32) Standard Industry Classification System (SIC) codes, utilized in the Study applied to contracting opportunities in the PTD grants and WSF opportunities. These SIC codes were selected based on the kinds of work and industries related to grants awarded by PTD in the past and to be awarded by WSF in FFY 2010. WSDOT then converted the SIC codes to NAICS codes. As previously stated, following are the NAICS Codes which have been correlated to SIC Codes, per the NERA Study:

SIC Code	SIC Description	NAICS code	NAICS Description
1629	Heavy Construction, n.e.c.	236210	Industrial Building Construction
		237110	Water and Sewer Line and Related Structures Construction
		237120	Oil and Gas Pipeline and Related Structures Construction

³ There are only twenty-three SIC codes listed, this is due to two of the SIC codes being identified in both the construction and consulting DBE availability tables of the NERA Study.

		237130	Power and Communication Line and Related Structures Construction
		237990	Other Heavy and Civil Engineering Construction
1771	Concrete Work	238110	Poured Concrete Foundation and Structure Contractors
		238140	Masonry Contractors
		238990	All Other Specialty Trade Contractors
1731	Electrical Work	238210	Electrical Contractors
1794	Excavation Work	238910	Site Preparation Contractors
1541	Industrial Buildings and Warehouses	236210	Industrial Building Construction
		236220	Commercial and Institutional Building Construction
1721	Painting	237310	Highway, Street, and Bridge Construction
		238320	Paint and Wall Covering Contractors
1542	Nonresidential Construction, n.e.c.	236220	Commercial and Institutional Building Construction
4213	Trucking, Except Local	484121	General Freight Trucking, Long-Distance, Truckload
		484122	General Freight Trucking, Long-Distance, Less Than Truckload
		484210	Used Household and Office Goods Moving
		484230	Specialized Freight (except Used Goods) Trucking, Long-Distance
1751	Carpentry Work	238130	Framing Contractors
		238350	Finish Carpentry Contractors
1791	Structural Steel Erection	238120	Structural Steel and Precast Concrete Contractors
1623	Water, Sewer, and Utility Lines	237110	Water and Sewer Line and Related Structures Construction
		237120	Oil and Gas Pipeline and Related Structures Construction
		237130	Power and Communication Line and Related Structures Construction
0782	Lawn and Garden Services	561730	Landscaping Services
1799	Special Trade Contractors, n.e.c.	236220	Commercial and Institutional Building Construction
		237990	Other Heavy and Civil Engineering Construction
		238150	Glass and Glazing Contractors
		238190	Other Foundation, Structure, and Building Exterior Contractors
		238290	Other Building Equipment Contractors

		238320	Paint and Wall Covering Contractors
		238350	Finish Carpentry Contractors
		238390	Other Building Finishing Contractors
		238910	Site Preparation Contractors
		238990	All Other Specialty Trade Contractors
		561790	Other Services to Buildings and Dwellings
		562910	Remediation Services
7389	Business Services, n.e.c.	312229	Other Tobacco Product Manufacturing
		313311	Broadwoven Fabric Finishing Mills
		314999	All Other Miscellaneous Textile Product Mills
		325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing
		425120	Wholesale Trade Agents and Brokers
		488490	Other Support Activities for Road Transportation
		491110	Postal Service
		512240	Sound Recording Studios
		512290	Other Sound Recording Industries
		518210	Data Processing, Hosting, and Related Services
		519190	All Other Information Services
		522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities
		541199	All Other Legal Services
		541340	Drafting Services
		541350	Building Inspection Services
		541370	Surveying and Mapping (except Geophysical) Services
		541410	Interior Design Services
		541420	Industrial Design Services
		541490	Other Specialized Design Services
		541870	Advertising Material Distribution Services
		541890	Other Services Related to Advertising
		541930	Translation and Interpretation Services
		541990	All Other Professional, Scientific, and Technical Services
		561410	Document Preparation Services
		561421	Telephone Answering Services
		561422	Telemarketing Bureaus
		561431	Private Mail Centers

		561439	Other Business Service Centers (including Copy Shops)
		561440	Collection Agencies
		561491	Repossession Services
		561499	All Other Business Support Services
		561591	Convention and Visitors Bureaus
		561599	All Other Travel Arrangement and Reservation Services
		561790	Other Services to Buildings and Dwellings
		561910	Packaging and Labeling Services
		561920	Convention and Trade Show Organizers
		561990	All Other Support Services
		711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities
		711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities
		711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
		812320	Drycleaning and Laundry Services (except Coin-Operated)
1795	Wrecking and Demolition Work	238910	Site Preparation Contractors
7353	Heavy Construction Equipment Rental and Leasing	238910	Site Preparation Contractors
		238990	All Other Specialty Trade Contractors
		532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing
4212	Local Trucking Without Storage	484110	General Freight Trucking, Local
		484210	Used Household and Office Goods Moving
		484220	Specialized Freight (except Used Goods) Trucking, Local
		562111	Solid Waste Collection
		562112	Hazardous Waste Collection
		562119	Other Waste Collection
		484121	General Freight Trucking, Long-Distance, Truckload
1711	Plumbing, Heating, and Air Conditioning	238210	Electrical Contractors
		238220	Plumbing, Heating, and Air-Conditioning Contractors
		238910	Site Preparation Contractors
1781	Water Well Drilling	237110	Water and Sewer Line and Related Structures Construction

4959	Sanitary Services, n.e.c.	488119	Other Airport Operations
		488490	Other Support Activities for Road Transportation
		561710	Exterminating and Pest Control Services
		561790	Other Services to Buildings and Dwellings
		562910	Remediation Services
		562998	All Other Miscellaneous Waste Management Services
8711	Engineering Services	541330	Engineering Services
8748	Business Consulting, n.e.c.	541320	Landscape Architectural Services
		541330	Engineering Services
		541618	Other Management Consulting Services
		541690	Other Scientific and Technical Consulting Services
		611710	Educational Support Services
8713	Surveying Services	541360	Geophysical Surveying and Mapping Services
		541370	Surveying and Mapping (except Geophysical) Services

In further refining the data, the availability of the SIC codes were then determined as follows⁴:

Construction Availability

SIC Code	SIC Description	DBE Percentage
1629	Heavy Construction, n.e.c.	7.84
1771	Concrete Work	7.75
1731	Electrical Work	8.29
1794	Excavation Work	6.94
1541	Industrial Buildings and Warehouses	7.28
1721	Painting	10.15
1542	Nonresidential Construction, n.e.c.	7.20
4213	Trucking, Except Local	8.45
1751	Carpentry Work	4.39
1791	Structural Steel Erection	10.67
1623	Water, Sewer, and Utility Lines	10.27
0782	Lawn and Garden Services	14.11
1799	Special Trade Contractors, n.e.c.	8.96
7389	Business Services, n.e.c.	22.46
1795	Wrecking and Demolition Work	10.29

⁴ This information is illustrated in two separate tables as Construction Availability and Consulting Availability as this was the methodology and format which the NERA Study utilized.

7353	Heavy Construction Equipment Rental and Leasing	6.84
4212	Local Trucking Without Storage	9.72
1711	Plumbing, Heating, and Air Conditioning	6.13
1781	Water Well Drilling	5.03
4959	Sanitary Services, n.e.c.	10.94
8711	Engineering Services ⁵	9.16
8713	Surveying Services ⁶	6.76
	Average	9.07

Consulting Availability

SIC Code	SIC Description	DBE Percentage
8713	Surveying Services	6.76
8711	Engineering Services	9.91
8748	Business Consulting, n.e.c.	19.98
	Average	12.22

To create an overall annual DBE Availability Percentage the average availability for construction and consulting were averaged.

Total Average DBE Availability Percentage 10.65

3. Race-Conscious versus Race-Neutral Projections⁷

Race-neutral Participation in FFY 2006 was 7.1% and in FFY 2007 was 0% therefore; average race-neutral participation was 3.55%. Utilizing past participation data, the race-neutral participation projection for FFY 2010 goal is 3.55%, and the race-conscious participation projection is 7.1%. FFY 2005 and FFY 2004 data was not utilized due to the *Western States Paving Decision* and lack of participation and goals during that time period.

4. Race-Neutral Initiatives

WSDOT will meet the maximum feasible portion of its overall goal through the race-neutral measures listed below.

⁵ SIC Code 8711 - Engineering Services, was identified by NERA Economic Consulting, Inc. to be both a construction and consulting SIC Code, therefore identified in both tables.

⁶ SIC Code 8713 Surveying Services, was identified by NERA Economic Consulting, Inc. to be both a construction and consulting SIC Code, therefore identified in both tables.

⁷ Due to federal reporting requirement timelines, the information needed for the FFY 2008 first Semi-Annual "Uniform Report of DBE Awards or Commitments and Payments" was not collected and therefore, FFY 2008 data was unavailable and not included.

WSDOT will maximize outreach efforts to the DBE contracting community and the use of DBE support services to increase the utilization and support of DBEs that participate on upcoming WSDOT projects.

a. Supportive Services

WSDOT provides the following supportive services to DBEs:

- Immediate and long-term business management, record keeping, financial and accounting capabilities;
- Long-term development assistance to increase opportunities to participate in more varied and “in-demand” types of work, and to achieve eventual self-sufficiency;
- Programs on contracting procedures and specific contract opportunities;
- Assistance in obtaining bonding or financing;
- Assistance to start-up firms, particularly in fields with historically low DBE participation;
- Identification of potential highway-related DBEs and prequalification assistance; and
- In an effort to increase awareness of the DBE Supportive Services program, WSDOT has developed a DBE Supportive Services hotline (888) 259-9143, email address dbess@wsdot.wa.gov, and website: www.wsdot.wa.gov/EqualOpportunity/DBE.htm.

b. Outreach and Networking

WSDOT engages in a number of outreach efforts to minority and women's organizations to enhance DBE opportunities in Department projects. These efforts include but are not limited to:

- Sponsorship of the annual Regional Contracting Forum held in Seattle, Washington, in partnership with state, local and federal agencies. This year's event attracted over 800 individuals.
- WSDOT works with organizations such as the Northwest Minority Supplier Diversity Council, Women in Construction, USDOT's Small Business Transportation Resource Center, the Women's Transportation Seminar, Urban League of Metropolitan Seattle Contractor Development and Competitiveness Center, African American Partners for Prosperity, the Office of Minority and Women's Business Enterprises and other groups to promote the DBE Program.
- WSDOT has established a Washington State DBE Work Group comprised of WSDOT divisions and local agencies, among others,

that will advise WSDOT on DBE issues, included but not limited to, goal setting, outreach, training, etc.

- In 2006, WSDOT established a Goal Monitoring Committee which is comprised of staff from Headquarters Construction, Highways and Local Programs, Consulting Services and Washington State Ferries that meet on a monthly basis to address the DBE program and goal setting.

5. Consultative Process

Per 49 CFR § 26.45 WSDOT's overall DBE goal setting process includes a consultative process requesting input from organizations serving or representing DBEs, minority-owned or women-owned businesses, state or local offices of procurement, federal, state or local offices responsible for enforcing civil rights laws, local labor offices and organizations, etc. WSDOT develops the proposed overall annual DBE goal and presents it to the DBE Work Group⁸ (individuals from various WSDOT divisions and offices, state agencies and local jurisdictions), for example:

- WSDOT Highways and Local Programs Division
- WSDOT Construction Office
- WSDOT Attorney General's Office
- WSDOT Ad & Award Office
- WSDOT Public Transportation Division
- WSDOT Secretary of Transportation
- WSDOT Consulting Services Office
- WSDOT Aviation Division
- Washington State Ferries
- Washington State Office of Minority & Women's Business Enterprises
- Federal Highway Administration
- City of Tacoma
- King County Metro
- Pierce County
- Port of Seattle
- Sound Transit

Once the DBE Work Group has reviewed and provided comments, the overall DBE goal may be revised accordingly.

⁸ The Work Group List is not inclusive of all WSDOT divisions and offices, state agencies and local jurisdictions participating in the DBE Work Group.

Upon DBE Work Group review of the proposed overall DBE goal, the proposed overall DBE goal is then reviewed by Minority, Women and Trade Organizations⁹, for example:

- American Council of Engineering Companies of Washington
- Community Coalition for Jobs and Contracting
- Laborer's Local 440, Street Pavers, Sewer, Water main, and Tunnel Workers
- Washington Association of General Contractors
- Contractor Development and Competitiveness Center/Seattle Urban League
- National Association of Women in Construction
- Northwest Minority Supplier Diversity Council
- Small Business Development Center
- Tribal Employment Rights Office
- Women's Transportation Seminar
- Puget Sound Minority Contractors Forum

The comments provided by the above Minority, Women and Trade Organizations are taken into consideration and the goal is revised as necessary.

6. Public Comment

To satisfy the public consultation requirements of 49 CFR § 26.45(d)(2), WSDOT will provide a press release to all media outlets in Washington State and publish the proposed overall annual DBE goal for FFY 2010 in the Seattle Daily Journal of Commerce. Included in its press release and publication is WSDOT's request for public comment and inspection of the goal methodology for 45-days from date of publication. WSDOT will be working in conjunction with Sound Transit to host an outreach event and publicize the overall annual goals.

⁹ The Minority, Women and Trade Organizations list is not inclusive of all the organizations which are involved with the overall DBE goal, and is only an example of the types of organizations involved.